

JANET M. HEROLD
Regional Solicitor
SUSAN SELETSKY (CSBN 176106)
Counsel for FLSA
CHERYL L. ADAMS (CSBN 208244)
Senior Trial Attorney
United States Department of Labor
Office of the Solicitor
90 7th Street, Suite 3-700
San Francisco, CA 94103
Direct: (415) 625-7759
Facsimile: (415) 625-7772
Email: Adams.Cheryl.L@dol.gov

Attorneys for Plaintiff Thomas E. Perez,
Secretary, U.S. Department of Labor

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

THOMAS E. PEREZ, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

MARIBEC NATIVIDAD, an individual doing
business as ANNE'S GUEST HOMES,

Defendant.

Case No.:

**COMPLAINT FOR VIOLATIONS OF
THE FAIR LABOR STANDARDS ACT (29
U.S.C. §§ 201, et seq.)**

1. Plaintiff Thomas E. Perez, Secretary of Labor, United States Department of Labor ("Plaintiff" or the "Secretary") brings this action pursuant to Section 17, 29 U.S.C § 217, of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C §§ 201-19) ("FLSA"), to enjoin Defendant MARIBEC NATIVIDAD, an individual doing business as ANNE'S GUEST HOMES from violating the provisions of Sections 6, 7, 11 and 15 of the FLSA, 29 U.S.C. §§ 206, 207, 211, and 215.

2. Plaintiff also and separately brings this action pursuant to FLSA § 16(c), 29 U.S.C. § 216(c), for the recovery of a judgment against Defendant for minimum wage and

1 overtime compensation, together with an equal amount as liquidated damages, due Defendant's
2 employees listed in the attached Exhibit A.

3 3. Jurisdiction of this action is conferred upon the Court by FLSA §§ 16 and 17, 29
4 U.S.C. §§ 216, 217; by 28 U.S.C. § 1331 (federal question); and by 28 U.S.C. § 1345 (United
5 States as plaintiff).

6 4. Venue lies in the United States District Court, Northern District of California,
7 pursuant to 28 U.S.C. § 1391(b) as a substantial part of the events or omissions giving rise to the
8 instant claims occurred in this district.

9 5. Defendant Maribec Natividad is and at all times material hereto has been doing
10 business as Anne's Guest Homes, residential care homes for the elderly, licensed by the State of
11 California with multiple facilities in Alameda County, California.

12 6. At all times material hereto, Defendant has been an employer within the meaning
13 of FLSA § 3(d), 29 U.S.C. § 203(d), in relation to the employees listed on Exhibit A.

14 7. At all times relevant to this Complaint, Defendant employs and/or employed
15 employees in and about her places of business who handled, sold, or otherwise worked on goods
16 or materials that have been moved in or produced for commerce by any person.

17 8. At all times relevant to this Complaint, the activities of the Defendant have been
18 and are related and performed through unified operation or common control for a common
19 business purpose, and constitute an enterprise within the meaning of FLSA § 3(r), 29 U.S.C. §
20 203(r).

21 9. At all times relevant to this Complaint, the Defendant is and has been an
22 "enterprise," as defined in FLSA § 3(s)(1)(A), 29 U.S.C. § 203(s)(1)(A), having annual gross
23 volume of sales made or business done of not less than \$500,000 (exclusive of sales taxes at the
24 retail level that are separately stated). By reason thereof, said enterprise at all times relevant to
25

1 this Complaint was an enterprise engaged in commerce or in the production of goods for
2 commerce within the meaning of the FLSA

3 VIOLATIONS OF THE FLSA

4 10. Defendant has violated the provisions of FLSA §§ 6 and 15(a)(2), 29 U.S.C. §§
5 206 and 215(a)(2), by paying many of her employees wages at rates less than the applicable
6 federal minimum wage in workweeks when said employees were engaged in commerce or in the
7 production of goods for commerce or were employed in an enterprise engaged in commerce or in
8 the production of goods for commerce, within the meaning of the Act.

9 11. Defendant has violated the provisions of FLSA §§ 7 and 15(a)(2), 29 U.S.C. §§
10 207 and 215(a)(2), by failing to compensate many of her employees for their employment in
11 excess of forty hours per week at rates not less than one and one-half times the regular rate at
12 which they were employed in workweeks when said employees were engaged in commerce or in
13 the production of goods for commerce or were employed in an enterprise engaged in commerce
14 or in the production of goods for commerce, within the meaning of the Act.

15 12. Defendant has violated the provisions of FLSA §§ 11(c) and 15(a)(5), 29 U.S.C.
16 §§ 211(c), 215(a)(5), by failing to maintain, keep, make available (to authorized agents of
17 Plaintiff for inspection, transcription, and/or copying), and preserve records of employees and of
18 the wages, hours, and other conditions and practices of employment maintained, as prescribed by
19 the regulations promulgated by Plaintiff pursuant to the authority granted in the FLSA, published
20 at 29 C.F.R. § 516.1.

21 13. During the period since on or about February 18, 2012, the Defendant has
22 violated the aforesaid provisions of the FLSA.

23 14. As a result of the violations of the FLSA, there are unpaid minimum wage and
24 overtime compensation being withheld by the Defendants.

1 15. A judgment permanently enjoining and restraining the above violations of the
2 FLSA is specifically authorized by FLSA § 17, 29 U.S.C. § 217.

3 16. A judgment enjoining and restraining any continued withholding of unpaid
4 minimum wage and overtime compensation due under the FLSA is specifically authorized by
5 FLSA § 17, 29 U.S.C. § 217.

6 17. A money judgment awarding unpaid back wages due under the FLSA, plus an
7 equal amount as liquidated damages, is specifically authorized by FLSA § 16(c), 29 U.S.C.
8 § 216(c).

9 WHEREFORE, cause having been shown, Plaintiff prays for a Judgment against
10 Defendant as follows:

11 (1) For an Order pursuant to Section 17 of the FLSA, 29 U.S.C. § 217, permanently
12 enjoining and restraining Defendant, her officers, agents, servants, employees, and all persons
13 acting in her behalf and interest from prospectively violating Sections 6, 7, 11 and 15 of the
14 FLSA, 29 U.S.C. §§ 206, 207, 211, and 215; and

15 (2) For an Order pursuant to Section 16(c) of the FLSA, 29 U.S.C. § 216(c), finding
16 Defendant liable for unpaid minimum wage and overtime compensation found by the Court to be
17 due Defendant's employees named in the attached Exhibit A, plus an equal amount as liquidated
18 damages; or

19 (3) In the event liquidated damages are not awarded, for an injunction issued pursuant
20 to FLSA § 17, 29 U.S.C. § 217, restraining Defendants, their officers, agents, servants,
21 employees, and those persons in active concert or participation with them from withholding the
22 amount of unpaid minimum wage and overtime compensation found due Defendants'
23 employees, including prejudgment interest computed at the underpayment rate established by
24 the Secretary of Treasury pursuant to 26 U.S.C. § 6621; and

25 (4) For an order awarding all other appropriate legal or equitable relief.

1 Dated: May 15, 2014

M. PATRICIA SMITH
Solicitor of Labor

3 JANET M. HEROLD
4 Regional Solicitor

5 SUSAN SELETSKY
6 Counsel for FLSA

7 */s/ Cheryl L. Adams*

8 CHERYL L. ADAMS
9 Senior Trial Attorney

EXHIBIT A

Employee Name	Back Wages	Liquidated Damages	Total Due
Lolita Bacani	798.35	399.18	1197.53
Edwin Bucacas	24286.73	12143.37	36430.10
Rosana Bucacas	24286.73	12143.37	36430.10
Purita Caburian	25050.77	12525.39	37576.16
Bella Castanares	7672.31	3836.16	11508.47
Erlinda Damian	27440.00	13720.00	41160.00
Girlie Del Rosario	689.24	344.62	1033.86
Leah Dumlao	27459.23	13729.62	41188.85
Julita Galima	23298.46	11649.23	34947.69
Nestor Galima	23298.46	11649.23	34947.69
Simona Llanes	23775.38	11887.69	35663.07
John Nelmidia	929.23	464.62	1393.85
Angela Niduzza	26764.62	13882.31	40646.93
Susan Perez	12936.15	6468.08	19404.23
Cecilia Tinio	21144.61	10572.31	31716.92
Michelle Ventigan	9394.61	4697.31	14091.92
Adelina Aplico	\$ 19,234.81	9617.40	28,852.21